

TITLE 8. PUBLIC EMPLOYMENT RELATIONS BOARD

NOTICE OF PROPOSED RULEMAKING

The Public Employment Relations Board (PERB or Board) proposes to adopt, amend or repeal the regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The Board proposes to adopt section 32613, to amend sections 32130, 32135, 32140, 32155, 32190, 32325, 32350, 32400, 32450, 32500, 32602, 32604, 32605, 32607, 32609, 32615, 32620, 32621, 32625, 32630, 32635, 32640, 32644, 32647, 32648, 32649, 32650, 32680, 32690, 32781, 32980, 33020, 40130, 51026, 61000, 61010, 61080, 61105, 61185, 61400, 61450, 61480, 61620, 71026, 81010, 81450, 91010, and 91450, and to repeal sections 32125, 32646, 32900, 32915, 32920, 32925, 32935, 32940, 32950, 60000, 60010, 60020, 60030, 60035, 60040, 60050, and 60070.

PUBLIC HEARING

The Board will hold a public hearing at 10:00 a.m., on February 9, 2006, in Room 103 of its headquarters building, located at 1031 18th Street, Sacramento, California. Room 103 is wheelchair accessible. At the hearing, any person may orally present statements or arguments relevant to the proposed action described in the Informative Digest. It is requested, but not required, that persons making oral comments at the hearing submit a written copy of their testimony at the hearing. Any person wishing to testify at the hearing is requested to notify the Office of the General Counsel as early as possible by calling (916) 322-3198 to permit the orderly scheduling of witnesses and to permit arrangements for an interpreter to be made if necessary.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comment relevant to the proposed regulatory action to the Board. The written comment period closes at 5:00 p.m. on February 7, 2006. Written comments will also be accepted at the public hearing. Submit written comments to:

Robert Thompson
General Counsel
Public Employment Relations Board
1031 18th Street
Sacramento, CA 95184
FAX: (916) 327-6377
E-mail: RThompson@perb.ca.gov

AUTHORITY AND REFERENCE

Pursuant to Government Code section 3541.3(g), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Educational Employment Relations Act (EERA). Pursuant to Government Code sections 3509(a) and 3541.3(g), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Meyers-Milias-Brown Act (MMBA). Government Code section 3513(h) authorizes the Board to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Ralph C. Dills Act (Dills Act). Government Code section 3563 authorizes the Board to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Higher Education Employer-Employee Relations Act (HEERA). Pursuant to Public Utilities Code section 99561(f), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA). Pursuant to Government Code sections 3541.3(g) and 71639.1(b), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Trial Court Governance and Employment Protection Act (Trial Court Act). Pursuant to Government Code sections 3541.3(g) and 71825(b), the Board is authorized to adopt, amend and repeal rules and regulations to carry out the provisions and effectuate the purposes and policies of the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act).

General reference for section 32125: Sections 3513(h), 3524, 3541.3(n) and 3563(m), Government Code, and Sections 99561(m) and 99566.3, Public Utilities Code. General reference for section 32130: Sections 3509, 3513(h), 3541.3, 3544.7(b), 3563, 3577(b), 71639.1, and 71825, Government Code, and Sections 99561 and 99564.4(b), Public Utilities Code. General reference for section 32135: Sections 3509, 3513(h), 3541.3(n), 3563(m), 71639.1 and 71825, Government Code, and Section 99561(m), Public Utilities Code. General reference for section 32140: Sections 3509, 3513(h), 3541.3(n), 3563(m), 71639.1 and 71825, Government Code, and Section 99561(m), Public Utilities Code. General reference for section 32155: Sections 3509, 3509.5, 3513, 3520, 3541.3, 3542, 3563, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code, and Sections 99561 and 99562, Public Utilities Code. General reference for section 32190: Sections 3509, 3513(h), 3541.3(h), 3563(g), 71639.1 and 71825, Government Code, and Section 99561(g), Public Utilities Code. General reference for section 32325: Sections 3509, 3509.5, 3514.5(c), 3520, 3541.5(c), 3542, 3563.3, 3564, 71639.1, 71639.4, 71825 and 71825.1, Government Code, Section 99561(f), Public Utilities Code, and Firefighters Union, Local 1186 v. City of Vallejo (1974) 12 Cal.3d 608. General reference for section 32350: Sections 3509, 3513(h), 3541.3(k), (n), 3563(j), (m), 71639.1 and 71825, Government Code, and Section 99561(j), (m), Public Utilities Code. General reference for section 32400: Sections 3509, 3509.5, 3520, 3542, 3564, 71639.4 and 71825.1, Government Code, and Section 99562, Public Utilities Code. General reference for section 32450: Sections 3509, 3513(h), 3541.3(j), (n), 3563(i), 71639.1 and 71825, Government Code, and Section 99561(i), Public Utilities Code. General reference for section 32500: Sections 3509, 3509.5, 3520, 3542, 3564, 71639.4 and 71825.1, Government Code, and Section 99562, Public Utilities Code. General reference for section 32602: Sections 3502.5, 3509, 3513(h),

3514.5, 3515.7, 3523, 3524, 3541.3(n), 3541.5, 3546.5, 3547, 3547.5, 3563(m), 3563.2, 3584, 3587, 3595, 71632.5, 71636, 71636.3, 71637.1, 71639.1, 71814, 71823 and 71825, Government Code, and Sections 99561(h), 99561.2, 99566.3, and 99569, Public Utilities Code. General reference for section 32604: Sections 3502, 3502.1, 3502.5, 3505, 3505.2, 3506, 3507 and 3509, Government Code, and *Firefighters Union, Local 1186 v. City of Vallejo* (1974) 12 Cal.3d 608. General reference for section 32605: Sections 3502.5, 3509, 3513(h), 3514.5, 3515.7, 3523, 3541.3(i), (n), 3541.5, 3546.5, 3547, 3547.5, 3563(h), (m), 3563.2, 3584, 3587, 3595, 71632.5, 71636, 71636.3, 71637.1, 71639.1, 71814, 71823 and 71825, Government Code, and Sections 99561(h), 99561.2, 99566.3, and 99569, Public Utilities Code. General reference for section 32607: Sections 71632.5, 71636, 71636.3, 71637.1, 71639.1 and 71639.3, Government Code. General reference for section 32609: Sections 71814, 71823 and 71825, Government Code. General reference for section 32613: Sections 3509, 3513, 3514.5, 3541.3, 3541.5, 3563, 3563.2, 71639.1 and 71825, Government Code, and Sections 99561 and 99561.2, Public Utilities Code. General reference for section 32615: Sections 3502.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, and 99563.8, 99566.3, and 99569, Public Utilities Code. General reference for section 32620: Sections 3509, 3513(h), 3514.5, 3519, 3519.5, 3541.3(i), 3541.5, 3543.5, 3543.6, 3563(h), 3563.2, 3571, 3571.1, 3571.3, 71639.1 and 71825, Government Code; Sections 99561(h), 99561.2, 99563.7 and 99563.8, Public Utilities Code; *Firefighters Union, Local 1186 v. City of Vallejo* (1974) 12 Cal.3d 608, and *Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board* (2005) 35 Cal.4th 1072 [29 Cal.Rptr.3d 234]. General reference for section 32621: Sections 3502.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71636, 71636.3, 71637.1, 71639.1, 71814, 71823, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code. General reference for section 32625: Sections 3502.5, 3509, 3513, 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3563(m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code. General reference for section 32630: Sections 3502.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), (n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3563(h), (m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code. General reference for section 32635: Sections 3502.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), (n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3563(h), (m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code. General reference for section 32640: Sections 3502.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), (n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3563(h), (m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code. General reference for section 32644: Sections 3502.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), (n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3563(h), (m), 3563.2,

3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code. General reference for section 32646: Sections 3509, 3514.5, 3519, 3519.5, 3541.5, 3543.5, 3543.6, 3563.2, 3571, 3571.1, 3571.3, 71639.1 and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7 and 99563.8, Public Utilities Code. General reference for section 32647: Sections 3502.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), (n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3563(h), (m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code. General reference for section 32648: Sections 3502.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5,, 3523, 3541.3(i), (n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3563(h), (m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code. General reference for section 32649: Sections 3502.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), (n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3563(h), (m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code. General reference for section 32650: Sections 3502.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), (n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3563(h), (m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code. General reference for section 32680: Sections 3502.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), (n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3563(h), (m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code. General reference for section 32690: Sections 3502.5, 3509, 3513(h), 3514.5, 3515.7, 3519, 3519.5, 3523, 3541.3(i), (n), 3541.5, 3543.5, 3543.6, 3546.5, 3547, 3547.5, 3563(h), (m), 3563.2, 3571, 3571.1, 3571.3, 3584, 3587, 3595, 71632.5, 71639.1, 71814, and 71825, Government Code, and Sections 99561(h), 99561.2, 99563.7, 99563.8, 99566.3, and 99569, Public Utilities Code. General reference for section 32781: 3513(h), 3524, 3541.3(a) and (e) and 3563(a), Government Code, and Section 99561(a), (e), Public Utilities Code. General reference for section 32900: Sections 3541.3(h), 3547, 3547.5, 3563(g) and 3595, Government Code. General reference for section 32910: 3523, 3541.3(h), 3547, 3547.5, 3563(g) and 3595, Government Code, and Section 99569, Public Utilities Code. General reference for section 32915: Sections 3523, 3541.3(h), 3547, 3563(g) and 3595, Government Code, and Section 99569, Public Utilities Code. General reference for section 32920: Sections 3523, 3541.3(h), 3547, 3547.5, 3563(g) and 3595, Government Code, and Sections 99561(g) and 99569, Public Utilities Code. General reference for section 32925: Sections 3523, 3541.3(h), 3547, 3547.5, 3563(g) and 3595, Government Code, and Section 99569, Public Utilities Code. General reference for section 32935: Sections 3523, 3541.3, 3547, 3563(g) and 3595, Government Code, and Sections 99561(g) and 99569, Public Utilities Code. General reference for section 32940: Sections 3523, 3541.3, 3547, 3547.5, 3563(g) and 3595, Government Code, and Section 99569, Public Utilities Code. General reference for section 32950: 3523, 3541.3(h), 3547, 3547.5, 3563(g) and 3595, Government Code, and Section 99569, Public Utilities Code. General reference for section 32980: Sections 3509, 3509.5, 3514.5(c), 3520, 3541.5(c), 3542, 3563.3, 3564, 71639.1,

71639.4, 71825 and 71825.1, Government Code, and Sections 99561.3 and 99562, Public Utilities Code, and Firefighters Union, Local 1186 v. City of Vallejo (1974) 12 Cal.3d 608. General reference for section 33020: Sections 3544.1(c) and 3544.7(b)(1), Government Code. General reference for section 40130: Sections 3520.5 and 3541.3(c), (l), Government Code. General reference for section 51026: Sections 3574(c) and 3577(b)(1), Government Code. General reference for section 60000: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code. General reference for section 60010: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code. General reference for section 60020: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code. General reference for section 60030: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code. General reference for section 60035: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code. General reference for section 60040: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code. General reference for section 60050: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code. General reference for section 60070: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code. General reference for section 61000: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code, and Sections 105140, 105152 and 105153, Public Utilities Code. General reference for section 61010: Sections 3507, 3507.1, 3509 and 3541.3, Government Code. General reference for section 61080: Sections 3502.5, 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3, Government Code. General reference for section 61105: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code. General reference for section 61185: Sections 3502.5, 3507, 3507.1, 3509 and 3541.3, Government Code. General reference for section 61400: Sections 3507, 3507.1, 3509 and 3541.3(a), (c), (e) and (l), Government Code. General reference for section 61450: Sections 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3(a) and (e), Government Code. General reference for section 61480: Sections 3507, 3507.1, 3507.3, 3507.5, 3508, 3509 and 3541.3(a) and (e), Government Code. General reference for section 61620: Sections 3502.5(d), 3507, 3509 and 3541.3(c), Government Code. General reference for section 71026: Sections 99564.1(c) and 99564.4(b)(1), Public Utilities Code. General reference for section 81010: Sections 3541.3, 71636, 71636.3, 71637, 71637.1 and 71639.1, Government Code. General reference for section 81450: Sections 3541.3, 71636, 71636.3, 71637, 71637.1 and 71639.1, Government Code. General reference for section 91010: Sections 3541.3, 71823 and 71825, Government Code. General reference for section 91450: Sections 3541.3, 71823 and 71825, Government Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The regulatory changes proposed fall into several subject categories described below. Some regulation sections are included in more than one category.

MMBA Petition for Board Review

Sections 60000 through 60070 (Chapter 5, Subchapter 1) currently provide for a procedure whereby a party to a determination by a public agency concerning an election, unit determination or other representation matter can request Board review of the determination.

This process has proven to be redundant and unnecessary. There have only been a few petitions filed and frequently the party also files an unfair practice charge based on the same conduct. When regulations were adopted for the Trial Court Act and Court Interpreter Act, this process was not included for those jurisdictions. The relevant regulatory changes involve repeal of sections 60000, 60010, 60020, 60030, 60035, 60040, 60050 and 60070, and conforming amendments to sections 32500, 61000, 61080, 61105, 61185 and 61400.

Standardizing the filing of alleged violations of the statutes as unfair practice charges and elimination of separate procedures for financial statements, public notice complaints and petitions for board review

Consistent with the proposed deletion of the MMBA Petition for Board Review process, the regulatory changes being considered under this category envision one process – the unfair practice charge process set forth at section 32602 et seq. – for all alleged violations of the statutes administered by PERB, and the elimination of all other processes that are presently used only for certain types of alleged violations. In addition to the MMBA Petition for Board Review process, the Board’s current regulations provide for separate processes regarding alleged violations of public notice requirements and financial reporting requirements. The proposed changes would establish a more uniform process. The relevant regulatory changes involve repeal of sections 32125, 32900, 32910, 32915, 32920, 32925, 32935, 32940, and 32950, and amendments to sections 32350, 32602 and 32615. In addition, the reference citations are amended for sections 32604, 32605, 32607, 32609, 32621, 32625, 32630, 32635, 32640, 32644, 32647, 32648, 32649, 32650, 32680, and 32690, consistent with the revised scope of application of these sections.

Applicability of PERB Representation Regulations to MMBA Parties

When PERB first adopted regulations, in 2001, describing representation procedures under the MMBA, the statute was silent on whether such regulations were permissible. Section 61000 provided, at that time, that the regulations were applicable only if adopted by a local agency as its own rules or where, in a particular case, all parties agreed to be bound by them. To our knowledge, no agency has adopted PERB’s rules, and in only a very few instances have parties elected to be bound by PERB rules.

The MMBA was later amended to expressly provide PERB with the authority to adopt representation rules for a local agency that does not have such rules. Section 61000 was amended to conform to the statutory change. However, the language regarding the applicability of our rules where the employer adopted them or the parties agree to use them was not deleted. The language about voluntary submission to PERB rules is now unnecessary, given the statutory change. Thus, the proposed regulatory changes include an amendment to section 61000 to limit the applicability of the representation regulations to the circumstance expressed in the MMBA. This approach is consistent with the recently-adopted rules under the Trial Court Act (section 81000) and Court Interpreter Act (section 91000).

Adding reference to MMBA Section 3509.5 where applicable

Following the amendment to the MMBA that added Government Code section 3509.5 (Statutes of 2002, Chapter 1137), the Board's regulations were amended to add appropriate references to the new section. However, sections 32155, 32325, 32400, 32500 and 32980 were not amended previously and the proposed regulatory changes address their omission.

MMBA statute of limitations

Section 32620 provides, in relevant part in subsection (b)(5), that an unfair practice charge shall be dismissed "if it is determined that a complaint may not be issued in light of Government Code Sections 3514.5, 3541.5, 3563.2, 71639.1(c) or 71825(c)." This provision incorporates the six months statute of limitations expressed by the Dills Act, EERA, HEERA, the Trial Court Act, and the Court Interpreter Act, respectively. The regulations do not include a comparable provision with respect to charges filed under the MMBA as the statute itself does not include an express provision establishing a statute of limitations. However, in Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board (2005) 35 Cal.4th 1072 [29 Cal.Rptr.3d 234], the California Supreme Court determined that the statute of limitations under the MMBA, as enforced by PERB, is six months. Thus, amendments to section 32620 are proposed to include appropriate reference to this basis for dismissal of an unfair practice charge filed under the MMBA.

Incorporating reference to PUC section 99561.2

Likewise, a potential basis for dismissal of a charge filed under TEERA is missing in the text of section 32620, even though PUC section 99561.2 was previously included in the Authority and Reference for the section. The proposed rulemaking changes include further amendment to section 32620 to correct the omission.

Unit Modification Petition issues

There are three areas of change proposed regarding unit modification procedures. First is the proposed elimination of a requirement in section 32781 that parties use a PERB form for such filings. Rather, the regulation would describe what information must be provided to PERB in order to pursue a unit modification.

Second, the Board is proposing to eliminate ambiguity and add clarity regarding when majority proof of support is required for a petition that seeks to add unrepresented positions to a unit. Section 32781(e), and comparable provisions in sections 61450, 81450, and 91450, states that PERB "may require" such support, but the regulations do not provide criteria for when PERB "should" require support. Use of a standard whereby support was required if the positions to be added equal 10 percent or more of the number of employees in the established unit was approved in a Board decision (State of California, Department of Personnel Administration (1989) PERB Decision No. 776-S) but never adopted as "the standard" by the Board. The proposed amendments to sections 32781, 61450, 81450, and 91450 would incorporate the 10 percent standard and make it mandatory.

Third, the Board is also proposing to provide for a circumstance where only 30 percent support would be required for a unit modification petition. The fact pattern where this proposed change would be applicable involves a union petitioning to create and become the exclusive representative for a unit of currently unrepresented employees, and an exclusive representative of a separate unit that wishes, instead, to have the employees added to its unit. Under these circumstances, it would be appropriate to have the exclusive representative demonstrate support among the unrepresented employees when the petitioning union has already demonstrated support (normally a majority). The 30 percent level is provided for as it is the most common level of support required for an employee organization to intervene on a request for recognition or qualify for the ballot in a representation election. This proposed change also affects sections 32781, 61450, 81450, and 91450.

Calculation of Last Day to File in Window Period Filings (see Government Code section 6800)

Government Code section 6800 reads: “The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.” As presently written, sections 32130(b), 33020, 40130, 51026, 61010, 71026, 81010, and 91010 conflict with this statutory provision, and the proposed changes would delete the language that is in conflict.

On-Line Filing of Unfair Practice Charges

Proposed new section 32613 and conforming changes to section 32135 would provide, as an alternative to filings by mail or facsimile transmission, for the filing of unfair practice charges through an on-line mechanism accessible on the PERB website. This pilot program is intended to provide parties with a speedy and reliable means to file charges that takes advantage of technological developments and resources.

Clarification of Meaning of Regulation 32135 (Filing)

The current language of this section is ambiguous in that it arguably means that a filing is timely only if filed on the last day set for filing. This construction was not intended and the suggested amendments to section 32135(a) and (b) are intended to clarify the meaning of the section.

Redefining Service on parties to include fax transmissions and clarification of proof of service requirements

Current regulations only allow a party to accomplish service by fax when the filing is made by fax. The proposed changes would allow for service by fax of any document that requires service. In addition, a review of section 32140 disclosed aspects that are inaccurate or incomplete, as well as difficult for a party to understand. The language has been revised in this proposal in an attempt to spell out in plainer and simpler language the requirements for service, and to include reference to all forms of acceptable service. The proposed changes include amendments to sections 32135(c) and 32140.

Clarification of 5 day extension rule

The proposed change to section 32130(c) is intended to clarify that the five day extension rule does not apply where PERB serves a document by fax instead of mail. The goal is to both improve PERB's productivity and efficiency and to clarify the filing deadlines for parties.

Repeal of Section 32646 and clarification of appeal rights after rulings on motions

Section 32646, concerning the opportunity of a party to seek dismissal of a complaint on various grounds and the process for such motions, is unnecessary as it is duplicative of rights and processes that are established in other regulation sections (see 32190 and 32200).

Miscellaneous Grammatical or Technical Corrections

Non-substantive changes are proposed affecting sections 32450, 61480, 61620.

DISCLOSURES REGARDING THE PROPOSED ACTION

Mandate on local agencies and school districts: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code section 17561: None.

Other non-discretionary cost or savings imposed upon local agencies: None

Costs or savings to state agencies: None

Cost or savings on federal funding to the state: None

Cost impact on private persons or directly affected businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Significant statewide adverse economic impact on business including the ability of California businesses to compete with businesses in other states: None

Significant effect on housing costs: None

The proposed regulations will not affect small business because they only affect public employers and public employees.

ASSESSMENT

The adoption of the proposed amendments to this regulation will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand businesses in the State of California.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative considered by it, or otherwise identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The Board invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the above-mentioned hearing or during the written comment period.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office, at the address below. As of the date this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations and the Initial Statement of Reasons. Copies of these documents and the Final Statement of Reasons may be obtained by contacting Robert Thompson at the address or phone number listed below.

ADOPTION OF PROPOSED REGULATIONS, AVAILABILITY OF CHANGED OR MODIFIED TEXT AND FINAL STATEMENT OF REASONS

Following the hearing, the Board may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text -- with changes clearly indicated -- shall be made available to the public for at least 15 days prior to the date on which the Board adopts the regulations. Requests for copies of any modified regulations and/or the final statement of reasons should be sent to the attention of Robert Thompson at the address indicated below. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

INTERNET ACCESS

The Board will maintain copies of this Notice, the Initial Statement of Reasons and the text of the proposed regulations on its web site, found at www.perb.ca.gov, throughout the rulemaking process. The Final Statement of Reasons or, if applicable, notice of a decision not to proceed, will be posted on the web site following the Board's action.

CONTACT PERSONS

Any questions or suggestions regarding the proposed action or the substance of the proposed regulations should be directed to:

Robert Thompson, General Counsel
Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814
(916) 327-8381

or

Les Chisholm, Regional Director
Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814
(916) 327-8383